

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

United States of America

v.

Damien G. Bey

Case No: 5:03-CR-252-1BR

USM No: 23552-056

Date of Original Judgment: May 10, 2004

Date of Previous Amended Judgment: January 12, 2016

(Use Date of Last Amended Judgment if Any)

Jennifer Dominguez

Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(1)(B)**

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(1)(B) for a modification of an imposed term of imprisonment to the extent otherwise expressly permitted by statute and as provided by Section 404 of the First Step Act of 2018, and having considered such motion, and taking into account the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☐ DENIED. ☒ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of n/a months is reduced to n/a.

(Complete Parts I and II of Page 2 when motion is granted)

Defendant was charged with, and convicted of, distribution on 3 June 2003 of more than 5 grams of cocaine base in violation of 21 U.S.C. § 841(a)(1). At the time of sentencing, the statutory penalties for that offense were not less than 5 years nor more than 40 years imprisonment and 4 years to life supervised release. Subsequently, the Fair Sentencing Act of 2010 modified those penalties to not more than 20 years imprisonment and 3 years to life supervised release. Accordingly, the court concludes that defendant is eligible for relief under the First Step Act of 2018. See *United States v. Davis*, No. 07-CR-245S(1), 2019 WL 1054554, at *2 (W.D.N.Y. Mar. 5, 2019). Although defendant is eligible for relief, he is not entitled to plenary resentencing. *Id.* The court initially imposed a term of imprisonment at the bottom of the sentencing guidelines range, 292 months. Subsequently, on motion pursuant to 18 U.S.C. § 3582(c)(2), the court reduced defendant's term of imprisonment to the bottom of the amended sentencing guidelines range, 235 months. Under the First Step Act, considering the new statutory penalties as if they were in effect at the time defendant committed the subject offense, defendant's reduced guideline range for imprisonment is 235 to 240 months and his reduced guideline range for supervised release is 3 years. The court, in its discretion, declines to reduce defendant's term of imprisonment below the reduced guideline range. Defendant's term of imprisonment remains 235 months. However, the term of supervised release is reduced to 3 years, the statutory mandatory minimum term.

If the amount of time the defendant has already served exceeds this sentence, the sentence is reduced to a "Time Served" sentence, subject to an additional period of up to ten (10) days for administrative purposes of releasing the defendant.

Except as otherwise provided, all provisions of the judgment(s) dated May 10, 2004, and January 12, 2016, shall remain in effect. **IT IS SO ORDERED.**

Order Date: 4/16/2019


Judge's signature

Effective Date: _____
(if different from order date)

W. Earl Britt Senior U.S. District Judge

Printed name and title